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Labor and Employment Alert: Wage and Hour Issues for Agricultural Employers

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The Fair Labor Standards Act (FLSA) is the federal law that sets minimum wage, overtime, recordkeeping, and child labor standards. Below we provide general information concerning the application of the FLSA to agricultural employment. The FLSA broadly defines “agriculture” to include:

- farming in all its branches;
- the cultivation and tillage of the soil;
- dairying;
- the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities;
- the raising of livestock, bees, fur-bearing animals, or poultry; and
- any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

“Agriculture” does not include work performed on a farm which is not incidental to or in conjunction with the farmer’s farming operation. It also does not include operations performed off a farm if performed by employees employed by someone other than the farmer whose agricultural products are being worked on.

What employees are exempt from overtime?

Employees who are employed in “agriculture” as broadly defined above are exempt from the overtime pay provisions. They do not have to be paid time and one half their regular rates of pay for hours worked in excess of 40 per week.

What employees are exempt from both overtime and minimum wage?

Any employer in agriculture who did not utilize more than 500 "man days" of agricultural labor in any calendar quarter of the preceding calendar year is exempt from the **minimum wage** and the **overtime pay** provisions of the FLSA for the current calendar year. A "man day" is defined as any day during which an employee performs agricultural work for at least one hour.

Additional exemptions from the **minimum wage** and **overtime** provisions of the FLSA for agricultural employees apply to the following:

- Agricultural employees who are immediate family members of their employer;
- Employees principally engaged on the range in the production of livestock;
- Local hand harvest laborers who commute daily from their permanent residence, are paid on a piece rate basis in traditionally piece-rated occupations, and were engaged in agriculture less than thirteen weeks during the preceding calendar year; and
- Non-local minors, 16 years of age or under, who are hand harvesters, paid on a piece rate basis in traditionally piece-rated occupations, employed on the same farm as their parent, and paid the same piece rate as those over 16.

What are the minimum wage requirements?

Although exempt from the overtime requirements of the FLSA, agricultural employees still must be paid the federal **minimum wage** (unless they are exempt from the **minimum wage** as noted above).

What special requirements apply to employees who are minors?

There are numerous restrictions on the employment of minors less than 16 years of age, particularly in occupations declared hazardous by the U.S. Secretary of Labor. Substantial civil money penalties are prescribed for violations of the monetary and child labor provisions of the law. The FLSA also requires that specified records be kept.

Employers may pay a youth minimum wage of not less than \$4.25 an hour to employees who are under 20 years of age during the first 90 consecutive calendar days after initial employment by their employer. The FLSA contains certain protections for employees that prohibit employers from displacing any employee in order to hire someone at the youth minimum wage.

Children who are ages 12 and 13 may be employed in non-hazardous jobs outside school hours on farms that also employ the youth's parent(s), or with written parental consent. Children who are ages 14 and 15 may be employed in non-hazardous jobs outside school hours. Children who are age 16 and older may be employed in any farm job, hazardous or not, at any time.

On small farms not covered by the FLSA minimum wage requirements, youth may work in any non-hazardous job outside school hours with parental consent.

Youths of any age may work at any time in any job on a farm owned or operated by their parents or persons standing in place of their parents.

There are 11 specific hazardous occupations in agriculture that may only be performed by hired farmworkers who are at least 16 years of age. Most involve work with machinery or handling toxic or explosive materials. Some limited exemptions exist that permit 14- and 15-year-olds to perform these otherwise prohibited tasks if they are enrolled in a vocational agriculture program or have received appropriate training.

What requirements apply when using migrant or seasonal workers?

Most agricultural employers, agricultural associations, and farm labor contractors are subject to the [Migrant and Seasonal Agricultural Worker Protection Act](#). This federal law requires agricultural employers, agricultural associations, farm labor contractors and their employees to observe certain labor standards when employing migrant and seasonal farmworkers, unless specific statutory exemptions apply. Additionally, farm labor contractors are required to register with the U.S. Department of Labor.

Employers have certain obligations with respect to migrant and seasonal farmworkers. These obligations include the following:

- Providing accurate information about wages and working conditions for the prospective employment in English, Spanish, and other languages as appropriate;
- Showing proof of registration if a farm contractor at the time of recruitment;
- Providing itemized, written statements of earnings for each pay period;
- Permitting workers to purchase goods from the source of their choice;
- Transporting the workers in vehicles that are safely maintained, properly insured, and operated by licensed drivers; and
- If providing housing, housing the workers in property that meets federal and state safety and health standards, presenting written information about the housing at the time of recruitment, and conspicuously posting or providing a statement of the terms and conditions of occupancy.

Federal law prohibits employers from discriminating against workers who file complaints, who testify, or who in any way exercise their rights on their own behalf or on behalf of others.

What problems typically arise for employers trying to comply with the FLSA?

Strict compliance with the FLSA's myriad requirements is important. Two of the more common issues among agricultural employers include:

- Not keeping/maintaining records of the names and permanent addresses of temporary agricultural employees, dates of birth of minors under age 19, or hours worked by employees being paid on a piece rate basis.
- Failing to pay overtime to employees whose jobs are related to agriculture but which do not meet the definition of agriculture contained in the FLSA.

Agricultural employers who utilize the services of a farm labor contractor are almost always in a situation of joint employment with the contractor in regard to the employees. Joint employment means that both the contractor and the farmer are responsible for complying with the **minimum wage**, **overtime**, **recordkeeping** and **youth employment provisions** of the law. If either party fails to comply with the law, then both parties may be held liable.

Employers who fail to comply with the FLSA may face audits or administrative actions by the U.S. Department and lawsuits by employees.

What other wage-hour issues should an agricultural employer consider?

In addition to the FLSA, agricultural employers must be aware of other federal and state requirements that affect their operations.

For example, the federal Occupational Safety and Health Administration prohibits employees under the age of 18 from operating certain machinery and equipment that is customarily used in agricultural operations, such as certain size tractors.

State wage and hour laws may differ (sometimes significantly) from the FLSA's requirements. States are permitted to set higher employment standards than required by federal law, including the FLSA, which means an employer must comply with the state standards regardless of what the FLSA otherwise requires.